



Department of Environmental Quality
Annual Regulatory Plan
7/1/15 to 6/30/16

Assembled by:

Dave Fiedler
Regulatory Affairs Officer
Created July 1, 2015
Updated December 15, 2015

TABLE OF CONTENTS

Division or Office	Page Numbers
<u>Air Quality Division (AQD)</u>	1-3
<u>Office of Drinking Water and Municipal Assistance (ODWMA)</u>	4-7
<u>Office of Environmental Assistance (OEA)</u>	8
<u>Office of Oil, Gas, and Minerals (OOGM)</u>	9-10
<u>Office of Waste Management and Radiological Protection (OWMRP)</u>	11-14
<u>Remediation and Redevelopment Division (RRD)</u>	15-17
<u>Water Resources Division (WRD)</u>	18-21

The following Department of Environmental of Quality (DEQ) staff contributed to the creation of the plan:

- Cari DeBruler (AQD)
- Jean Shekter (ODWMA)
- Karen Edlin (OEA)
- Adam Wygant (OOGM)
- Ronda Blayer (OWMRP)
- Bob Reisner (RRD)
- Susi Greiner (WRD)

**Department of Environmental Quality
Air Quality Division**

Rule(s) to be **processed** between July 1, 2015 and June 30, 2016.

ORR # 2014-153 EQ, Part 1 – General Provisions – Definitions (R 336.1101 – R 336.1128).

Update the volatile organic compound definition and adoptions by reference and other associated with changes to Part 2.

ORR # 2014-154 EQ, Part 2 – Air Use Approval (R 336.1201 – R 336.1299). Address recommendations of stakeholder workgroups on air toxics and permit exemption rules, update Renewable Operating Permit program rules, and update adoptions by reference.

ORR # 2014-024 EQ, Part 4 – Emission Limitations and Prohibitions – Sulfur Bearing Compounds (R 336.1401 – R 336.1420). Address federal requirements to reduce sulfur dioxide emissions in an area not meeting the National Ambient Air Quality Standards for sulfur dioxide.

Part 6 – Emission Limitations and Prohibitions – Existing Sources of Volatile Organic Compound Emissions (R 336.1601 – R 336.1661). Revise R 336.1610, Existing coating lines; emission of volatile organic compounds from existing automobile, light-duty truck, and other product and material coating lines, to remove primer surface and topcoat emission limits at auto assembly plants that are now covered by federal emission limits. Updates to R 336.1619, Use of cutback paving asphalt. Also update adoption by reference.

Part 8 – Emission Limitations and Prohibitions – Oxide of Nitrogen (R 336.1801 - R 336.1834). Address federal court decisions on pollutant transport requirements and update adoptions by reference.

ORR # 2015-079 EQ Part 9 - Emission Limitations and Prohibitions – Miscellaneous (R 336.1901 - R 339.1972). Address federal rulemaking on state startup/shutdown/malfunction emissions.

1. Please include rules that are obsolete or superseded and can be **rescinded** between July 1, 2015 and June 30, 2016. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

R 336.1208a, R 336.1299, and R 336.1916

2. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

The Air Quality Division (AQD) has exercised all of its statutory rulemaking authority.

3. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

The AQD rules were reviewed in 2011 by the Environmental Advisory Rules Committee (ARC). In addition to the revisions to the Parts 1 and 2 rules identified in Item No. 1, the AQD will be addressing Environmental ARC issues in Part 8 now that litigation in the federal courts has been resolved.

- (a) Whether there is a continued need for the rules.

See Environmental ARC report.

- (b) A summary of any complaints or comments received from the public concerning the rules.

See Environmental ARC report.

- (c) The complexity of complying with the rules.

See Environmental ARC report.

- (d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

See Environmental ARC report.

- (e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The AQD is constantly in the process of updating various rules and keeping up with such changes.

4. Please provide the URL link the department or bureau is currently using to display their administrative rules. [Example.]

The Office of Regulatory Reinvention maintains the Web site that lists all of the AQD rules currently under review. To view revisions, go to <http://w3.lara.state.mi.us/orr/Rules.aspx?type=dept&id=EQ>. To view all of the AQD rules, go to http://w3.lara.state.mi.us/orr/AdminCode.aspx?AdminCode=Department&Dpt=EQ&Level_1=Air+Quality+Division.

5. Please provide a list of the items identified for action in the 2014 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation. [Example description.]

COMPLETED:

ORR # 2013-109 EQ, Part 9 – Emission Limitations and Prohibitions – Miscellaneous.

Revise to bring state rules in line with federal rules.

ORR # 2013-065 EQ, Part 14 – Clean Corporate Citizen Program. Address the statutory changes in the Natural Resources and Environmental Protection Agency, 1994 PA 451, as amended (NREPA).

OUTSTANDING:

ORR # 2014-153 EQ, Part 1 – General Provisions – Definitions. Update the volatile organic compound definition, adoptions by reference, and other associated changes to Part 2.

ORR # 2014-154 EQ, Part 2 – Air Use Approval. Address recommendations of stakeholder workgroups on air toxics and permit exemption rules, update Renewable Operating Permit program rules, and update adoptions by reference.

ORR # 2014-024 EQ, Part 4 – Emission Limitations and Prohibitions – Sulfur Bearing Compounds. Address federal requirements to reduce sulfur dioxide emissions in an area not meeting the National Ambient Air Quality Standards for sulfur dioxide and expected federal rulemaking on pollutant transport requirements.

Part 6 – Emission Limitations and Prohibitions – Existing Sources of Volatile Organic Compound Emissions. Revise R 336.1610 to remove primer surface and topcoat emission limits at auto assembly plants that are now covered by federal emission limits. Updates to R 336.1618, Use of cutback paving asphalt. Also update adoptions by reference.

Part 8 – Emission Limitations and Prohibitions – Oxide of Nitrogen. Address expected federal rulemaking on pollutant transport requirements and update adoptions by reference.

ORR # 2015-079 EQ, Part 9 – Emission Limitations and Prohibitions – Miscellaneous. Address federal rulemaking on state startup/shutdown/malfunction emissions.

**Department of Environmental Quality
Office of Drinking Water and Municipal Assistance**

1. **Rules to be processed between July 1, 2015, and June 30, 2016.**

ORR # 2014-023 EQ, Supplying Water to the Public, Part 1 – Part 28 (R 325.10101 – R 325.12820), promulgated under the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399). The Department of Environmental Quality (DEQ) has forwarded the Joint Committee on Administrative Rules (JCAR) package to the Office of Regulatory Reinvention (ORR) to commence the formal certification. These rules are necessary to maintain primary enforcement authority for the Public Water System Supervision Program under Act 399 in lieu of the federal Safe Drinking Water Act (SDWA) approved on March 3, 2014. The Office of Drinking Water and Municipal Assistance (ODWMA) must promulgate rules that are as stringent as the February 13, 2013, amendments to the National Primary Drinking Water Regulations (NPDWR) promulgated under the SDWA. In addition to adopting the NPDWR amendments, this rule package contains amendments to the cross connection control provisions, asset management provisions, operations oversight expectations, and operator certification provisions. The rule package also removes two items: Firstly, remove the water quality report requirement currently imposed on K-12 schools and daycare centers that are nontransient noncommunity water supplies. Secondly, remove provisions to approve out-of-state sources of bottled water. The DEQ ended this program in 2010 as one of the measures to align services with available resources. Changes to the cross connection rules are in response to Recommendation W-17 of the Environmental ARC and the Attorney General's direction to enhance rules governing cross connection control programs instead of relying on guidance through the Cross Connection Rules Manual (CCRM). Enhancements to the requirements for asset management planning are needed to ensure water systems are adequately operating, maintaining, and managing facilities necessary to provide safe and reliable drinking water so that water systems are prepared to replace critical infrastructure before catastrophic failures jeopardize public health. Finally, the rule package changes the deadline by which individuals must submit an application for certification examinations to allow for the additional processing necessary with the passage of certification examination fees now in effect as a result of 2011 amendments to the NREPA, specifically MCL 324.3110(3)(c).

Campgrounds (R 325.1551 – R 325.1599). The ODWMA anticipates concluding work on a rules package to address changes that have occurred in the campgrounds industry since the rules were last revised in December 2000. These changes will include additional definitions of the types of campgrounds that may exist and clarification on structures that may be placed on a campground site that are not recreational vehicles. This work will commence after completing revisions to the Campgrounds portion of the Michigan Public Health Code, 1978 PA 368, as amended. The stakeholder process for revising the statute began in late 2014 and is ongoing.

2. Please include rules that are obsolete or superseded and can be **rescinded** between July 1, 2015, and June 30, 2016. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

ORR # 2015-083 EQ, Marina Facilities (R 325.2581 – R 325.2591). The Marina Rules were promulgated by the Department of Public Health (DPH) under the authority of the Watercraft Pollution Control Act, 1970 PA 167. For a brief time in the late 1970s, staff of the DPH, Environmental Health Section, actually conducted marina inspections that were required in conjunction with obtaining a marina operating permit. Due to lack of resources, regulatory inspections were discontinued. There has not been an active program for 30+ years. The authority for rules was carried over into Part 95, Watercraft Pollution Control, of the NREPA (refer to MCL 324.9508). Although there has not been an active regulatory program for decades, the statute still allows for the rules. The absence of inspections and enforcement raises the question of whether the rules should be rescinded. The marina rules address water supply stations, litter containers, toilet facilities, pump-out facilities, and

receiving units for sewage. Research into the authority, any current internal policies, and other DEQ-related information pertaining to these rules will be conducted. Internal and external stakeholders will be sought to discuss the need for updating or rescinding these rules.

Mobile Home Parks and Seasonal Mobile Home Parks (R 325.3311 – R 325.3393). The mobile home regulations largely contain requirements that are the responsibility of the Department of Licensing and Regulatory Affairs (LARA) to oversee and administer. Elements of Part 1. Definitions; Part 2. Water Supply Systems; Part 3. Sewage Collection and Disposal System; Part 4. Drainage; Part 7. General Operation, Maintenance, and Safety; and Part 9. Certification of Compliance, are still needed to coordinate enforcement actions between the DEQ and LARA. These elements are referenced in the Manufactured Housing Rules, R 125.1101 – R 125.3069 promulgated under the Mobile Home Commission Act, 1987 PA 96, as amended (Act 96), MCL 125.2301 – 125.2350. Manufactured housing communities are still required to conform to these DEQ rules, and as such, they are not obsolete and cannot be rescinded. There are, however, portions of the rules that need to be updated to more accurately reflect the changes resulting from Executive Order 2006-16, being MCL 445.1981 and the 2015 amendments to Act 96. A task force was assembled in 2014 to review Act 96 and propose further changes to the regulations. It is made up of representatives from LARA, the Mobile Home Commission, the industry, and four DEQ staff members. Once the work of the task force is complete, these rules may need to be updated.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

Part 117, Septage Waste Servicers, of the NREPA (specifically MCL 324.11701 – R 324.11720). Part 117 was amended in 2004 to require the DEQ to promulgate rules for septage waste receiving facilities and for continuing education requirements. The DEQ has successfully implemented the receiving facility and education provisions using the statutory authorities and has not had resources to promulgate rules for this program. The following sections require the promulgation of rules:

324.11715b Rules; requirements for receiving facilities and control of nuisance conditions; notice of operation; penalties for noncompliance.

Sec. 11715b. (1) The department shall promulgate rules establishing design and operating requirements for receiving facilities and the control of nuisance conditions.

324.11718 Rules.

Sec. 11718. (1) The department shall promulgate rules that establish both of the following: (a) Continuing education requirements under section 11706.

(b) Design and operating requirements for receiving facilities, as provided in section 11715b.

(2) The department may, in addition, promulgate rules that do 1 or more of the following .

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

ORR # 2014-023 EQ, Supplying Water to the Public, Part 1 – Part 28, specifically Part 14, cross connections provisions. Recommendation W-17 of the Environmental ARC states that R 325.10113 should be amended to set a frequency of testing residential cross connections. The rule amendment establishes testing at least every three years, except backflow preventers installed on untreated lawn irrigation systems may be every five years if specified in the local cross connection control program. Public hearing comments on the proposed cross connection rules were generally favorable. A few people commented that allowing backflow preventers on untreated lawn irrigation systems to be tested once every five years as backsliding and it should not be allowed. However, the

DEQ believes that testing backflow preventers on these types of irrigation systems is still protective of public health and kept the provision in the draft rules.

(a) Whether there is a continued need for the rules.

The cross connection provisions of these rules are critical to protecting public health. For decades, water supplies have referred to the CCRM to meet the DEQ's expectation for a robust cross connection control program. The rule amendments formalize these expectations.

(b) A summary of any complaints or comments received from the public concerning the rules.

The Environmental ARC identified the **cross connection** rules as those needing updating to address concerns from businesses and local government. Public hearing comments on the proposed cross connection rules were generally favorable.

(c) The complexity of complying with the rules.

The DEQ strongly believes that water utilities should be allowed flexibility to establish the frequency of inspections of cross connections and testing of backflow preventers. To provide flexibility within parameters, the rule amendment of ORR 2014-023 EQ sets a maximum frequency of three years while allowing local programs to set a five-year frequency for untreated irrigation systems. Other provisions enhance the current cross connection provisions to adopt aspects of the CCRM that water supplies have used for decades to develop their cross connection control programs.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

None of the rules conflict with or duplicate similar rules or regulations adopted by other regulatory agencies.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

A revision to the Supplying Water to the Public Rules last occurred in 2009. The NPDWR amendments of February 13, 2013, prompted the ORR 2014-023 EQ rule package to adopt rules that are as stringent as the NPDWR.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

The drinking water program has traditionally provided Act 399 and Supplying Water to the Public Rules formatted into one document for the convenience of the regulated community and regulatory staff. They are at http://www.michigan.gov/documents/deq/deq-wb-dwehs-cws-Act399_247583_7.pdf under the Laws and Rules category of the Community Water Supply Web page at http://www.michigan.gov/deq/0,4561,7-135-3313_3675_3691---,00.html, the Noncommunity Water Supply Web page at http://www.michigan.gov/deq/0,4561,7-135-3313_3675_3692---,00.html and the Water Well Construction Web page at http://www.michigan.gov/deq/0,4561,7-135-3313_3675_3694---,00.html. Note that the cover of this document provides links to the statute on the Michigan Legislature Web site and the administrative rules on the Web site of the Office of Regulatory Reinvention.

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deq and select "Laws & Rules" at the bottom of the page under the title "Regulations." On this page are links to ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deq/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2014 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation.

COMPLETED

ORR # 2014-023 EQ, Supplying Water to the Public, Part 1 – Part 28. This rule package responds to the Environmental ARC Recommendation W-17. Rules were filed on October 16, 2015.

OUTSTANDING:

Campgrounds. Revisions to the Campgrounds statute (Michigan Public Health Code) began in late 2014 through a stakeholder process. After this process is completed, work on updating the Campgrounds Rules will begin.

Mobile Home Parks and Seasonal Mobile Home Parks. As mentioned in Item 2, above, the rules are promulgated under authority of the Mobile Home Commission Act and provide the necessary authority for DLARA to take action on a community's license for environmental rules under the DEQ's jurisdiction. Until the work of the task force mentioned in Item 2 is complete, these rules need to remain.

Septage Waste Servicers of the NREPA. As mentioned in Item 3, above, the current lack of resources prevents the DEQ from promulgating rules, as required by statute.

ORR # 2015-083 EQ, Marina Facilities (R 325.2581 – R 325.2591).

**Department of Environmental Quality
Office of Environmental Assistance**

1. Rule(s) to be **processed** between July 1, 2015 and June 30, 2016.

None.

2. Please include rules that are obsolete or superseded and can be **rescinded** between July 1, 2015 and June 30, 2016. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

No.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

None.

(a) Whether there is a continued need for the rules.

(b) A summary of any complaints or comments received from the public concerning the rules.

(c) The complexity of complying with the rules.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules. [Example.]

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deq and select "Laws & Rules" at the bottom of the page under the title "Regulations." On this page are links to the ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deq/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2014 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation. [Example description.]

None.

**Department of Environmental Quality
Office of Oil, Gas, and Minerals**

1. Rule(s) to be **processed** between July 1, 2015 and June 30, 2016.

Conformance Bond or Statement of Financial Responsibility Requirements (R 324.210, R 324.211, and R 324.212). As part of the Auditor General's Performance Audit of the Office of Oil, Gas, and Minerals (OOGM) dated September 2013, Finding 5 recommended that OOGM pursue changes in rules to update current single well bond amounts that have not been reviewed since 1996. The OOGM has agreed to evaluate actual necessary costs and trends for plugging wells and pursue changes as appropriate to single well bond amounts.

2. Please include rules that are obsolete or superseded and can be **rescinded** between July 1, 2015 and June 30, 2016. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

None.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

The OOGM has exercised all of its mandatory/statutory rulemaking authority.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

R 324.208 does create some concern for industry. The rule mandates that oil and gas well permits shall terminate after two years unless the drilling operation has reached a depth of at least 100 feet and the drilling operation is diligently proceeding, or the well is otherwise being used for its permitted purpose. In recent years there have been an increasing number of legal challenges and economic factors that have delayed the start of drilling beyond two years after permit issuance. Many states and the federal government allow for basic extensions of a permit for such reasons, whereas Michigan's current oil and gas rules do not.

- (a) Whether there is a continued need for the rules.

There is no apparent need for mandatory termination of permits under R 324.208.

- (b) A summary of any complaints or comments received from the public concerning the rules.

There have been no complaints or comments received from the public concerning R 324.208.

(c) The complexity of complying with the rules.

Compliance with R 324.208 can create considerable regulatory uncertainty. Permit holders have navigated the regulatory process once and received their permit. If they face delays outside of their control extending beyond two years, they are forced to reapply and go through the entire permitting process a second time for the exact same activity. This creates additional administrative work for the OOGM, and can cause additional confusion with the public.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

R 324.208 does not directly duplicate or conflict with other rules; however, it diverges from federal injection control permits, which allow operators to extend permits with a basic request. Oftentimes, delays in the federal permitting process can extend to more than two years, during which period the state permit can expire, forcing operators to reapply for state permits due to circumstances beyond their control.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

R 324.208 was last reviewed during the 1996 rule revision.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deg and select "Laws & Rules" at the bottom of the page under the title "Regulations." On this page are links to ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deg/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2014 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation.

COMPLETED:

ORR # 2013-101 EQ, Oil and Gas Operations. Revised to provide additional assurance to Michigan citizens that high-volume hydraulic fracturing operations have the requisite regulatory oversight.

OUTSTANDING:

Conformance Bond or Statement of Financial Responsibility Requirements (R 324.210, R 324.211, and R 324.212). Pursue changes in rules to update current single well bond amounts that have not been reviewed since 1996.

**Department of Environmental Quality
Office of Waste Management and Radiological Protection**

1. Rule(s) to be **processed** between July 1, 2015 and June 30, 2016.

Hazardous Waste Management (R 299.9101 et seq.). The U.S. EPA has authorized Michigan to administer the state's Hazardous Waste Management Program in lieu of the federal Hazardous Waste Management Program. The Office of Waste Management and Radiological Protection (OWMRP) plans to initiate rule revisions to address federal revisions, including: cathode ray tubes, conditional exclusions for carbon dioxide streams in geologic sequestration activities, solvent-contaminated wipes, electronic manifesting, and definition of solid waste. The revisions will also address stakeholder recommendations and a systematic review of a segment of the state-only hazardous waste codes per Environmental ARC Recommendation RM-3.

2. Please include rules that are obsolete or superseded and can be **rescinded** between July 1, 2015 and June 30, 2016. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

ORR # 2014-033 EQ Ionizing Radiation Rules (IRR) (R 325.5001 – R 325.5721). Michigan's IRR are a unified set of rules covering both radioactive material and radiation machines. The IRR were written in the early 1970s when the regulatory authority for radiation machines and radioactive materials were enforced by one program in the Department of Public Health. Executive Order 1996-1 split the program in two. The authority for radiation machines is now in LARA (Executive Orders 1996-1, 1996-2, 2003-1, and 2011-4). The authority for state-controlled radioactive material is now in the DEQ (Executive Orders 1996-1, 1996-2, 2009-45, and 2011-1). The IRR are shared between the Radiation Safety Section of LARA and the Radiological Protection Section of the DEQ. Some rules address only radiation machines; some rules address only radioactive material; and some rules are used by both regulatory programs. At the time the IRR were written, Michigan was actively pursuing Agreement State status with the U.S. Nuclear Regulatory Commission (U.S. NRC) whereby Michigan would regulate virtually all radioactive material in the state. This agreement has never been signed between the state of Michigan and the U.S. NRC. Under the U.S. Atomic Energy Act, the U.S. NRC regulates most of the radioactive material in the state. The IRR identified herein may be rescinded because they are obsolete. Michigan's Radiological Protection Program regulates naturally occurring radioactive material, technologically enhanced naturally occurring radioactive material, and material exempted or not otherwise regulated by the U.S. NRC.

Resource Recovery Commission (R 299.5001 – R 299.5016). The Commission was abolished per Executive Reorganization Order 1991-22.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

Part 137 of the Michigan Public Health Code, 1978 PA 368, as amended (Act 368). Part 137 was enacted to enable the state to regulate a low-level radioactive waste disposal facility. Since the state is not actively seeking a site for such a facility, no rules regulating the disposal facility and those who would use the facility have been promulgated. Three sections of Part 137 authorize the promulgation of rules:

333.13708 Duties of director or director's designee.

Sec. 13708. The director or the director's designee, with the assistance of other state departments and agencies, shall do all of the following:

(e) Promulgate rules and take any other action considered necessary by the department as authorized under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. In fulfilling the requirement to

promulgate rules, the director shall promulgate rules necessary to implement the provisions of this part that pertain to the issuance of permits to generators, transporters, collectors, and processors, including rules pertaining to the possession of waste by a generator, transporter, collector, or processor that is incidental to the regulated activity of the permit holder.

333.13720 Site closure and stabilization; control; cost; rules; surveillance and maintenance of disposal site.

(2) The department shall promulgate rules pertaining to site closure and stabilization and the active surveillance and maintenance of the disposal site.

333.13737 Action to restrain, enjoin, prevent, or correct violation; rules adopting schedule of monetary civil fines.

(2) The department may promulgate rules to adopt a schedule of monetary civil fines in accordance with sections 2262 and 2263 to enforce this part.

Part 173, Electronics, of the NREPA. Enacted in 2008, Part 173 establishes a registration program for manufacturers and recyclers of televisions and computers and requires the manufacturers to maintain a take-back program for these devices. Part 173 provides the DEQ with authority to promulgate rules to implement certain requirements. The OWMRP does not intend to pursue these rules because they are not needed to implement the current program given the minimal resources the DEQ has to administer it.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Medical Waste Producing Facilities (R 325.1541 – R 325.1549). Environmental ARC Recommendation RM-8 states, “Amend Part 138 or rules governing the disposal of medical waste to require the disposal of sharps that are used strictly for non-medical procedures (a) when the storage container is full, or (b) annually, whatever comes first.” Legislation is needed first to implement this recommendation.

Part 121, Liquid Industrial Waste, of the NREPA. Environmental ARC Recommendation RM-1 states that the DEQ should develop rules and/or changes to Part 121 to make the process of handling these materials more streamlined and cost effective for the regulated community while protecting human health and the environment. Part 121 does not currently provide the DEQ with rulemaking authority.

(a) Whether there is a continued need for the rules.

The medical waste rules are needed for public health protection.

There are no Part 121 rules as explained in Box 4.

(b) A summary of any complaints or comments received from the public concerning the rules.

The Environmental ARC identified the medical waste rules referenced in Box 4 as those needing updating to address concerns from businesses, manufacturers, and local government.

The DEQ is aware that certain aspects of the Part 121 program, such as uniform hazardous waste manifests and manifest submittals, may be an impediment to interstate business. An evaluation of the Part 121 program through a stakeholder process was initiated on June 10, 2014, and completed in January 2015 with the finalization of a stakeholder recommendations report.

(c) The complexity of complying with the rules.

The medical waste rules are very basic and add clarity to the statutory provisions.

There are no Part 121 rules as explained in Box 4.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

None of the rules referenced in Box 4 conflict with or duplicate similar rules or regulations adopted by other regulatory agencies.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The medical waste rules were evaluated in 2005 and stakeholders recommended statutory amendments to add clarity to the program, which already contains provisions enabling the review and approval of alternative medical waste treatment technologies.

Part 121 does not provide the DEQ rulemaking authority.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules. [Example.]

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deq and select "Laws & Rules" at the bottom of the page under the title "Regulations." On this page are links to the ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deq/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2014 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation. [Example description.]

COMPLETED:

Solid Waste Management; Inert Standards and Beneficial Reuse of Nonhazardous Solid Waste. The conforming amendments necessitated by 2014 PA 178, 2014 PA 179, and 2014 PA 180 became effective March 11, 2015, and also addressed Environmental ARC Recommendation RM-2.

OUTSTANDING:

Medical Waste Producing Facilities (R 325.1541 – R 325.1549). The OWMRP intended to develop rules to implement potential amendments to Part 138 of Act 368. Amendments have not been introduced in the current legislative session. As noted in Box 4, some enabling legislation is also required.

IRR (R 325.5001 – R 325.5721). Through 2014-033 EQ, the DEQ has been working with the ORR to amend or rescind specific rules in the IRR that are no longer needed or under the purview of LARA concurrent with the promulgation of rules to regulate radiation machines, R 333.5001 to R 333.5721, by LARA.

Part 121, Liquid Industrial Waste, of the NREPA. The DEQ used the recommendations developed through the stakeholder process to develop draft legislation. Senate Bill (SB) 400 was introduced on June 16, 2015.

**Department of Environmental Quality
Remediation and Redevelopment Division**

1. Rule(s) to be **processed** between July 1, 2015 and June 30, 2016.

Cleanup Criteria Requirements for Response Activity (R 299.1 – 299.50). The current rules, which were updated in December, 2013, reflect the December 2010 amendments of Part 201, Environmental Response, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The Department of Environmental Quality (DEQ) convened the Criteria Stakeholders Advisory Group (CSA) specifically to advise the agency on these rules. The CSA has provided its recommendations and the DEQ is pursuing a comprehensive update of the cleanup criteria rules following those recommendations.

2. Please include rules that are obsolete or superseded and can be **rescinded** between July 1, 2015 and June 30, 2016. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

Site Reclamation Grant/Loan Program, R 299.5051 to R 299.5061

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

The RRD has exercised all of its mandatory/statutory rulemaking authority.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Cleanup Criteria Requirements for Response Activity (R 299.1 – R 299.50). In 2014, the DEQ convened the Criteria Stakeholders Advisory Group (CSA) specifically to advise the agency on these rules. The CSA has provided its recommendations and the DEQ is pursuing a comprehensive update of the cleanup criteria rules following those recommendations.

(R 299.51001) Specific rules have not been identified as problematic; rather the implementation and lack of common understanding on how to comply has been problematic.

- (a) Whether there is a continued need for the rules.

There have been no developments since the implementation of these rules that would demonstrate a need to discontinue them.

- (b) A summary of any complaints or comments received from the public concerning the rules.

(R 299.1 – R 299.50) The recommendations made by the CSA address the concerns noted by the stakeholder community. The DEQ is pursuing a comprehensive update of the cleanup criteria rules following those recommendations.

(R 299.51001) The general public has not expressed interest; stakeholders have been instrumental in the suggested changes, which primarily update to rules to align with current statute.

(c) The complexity of complying with the rules.

(R 299.1 – R 299.50) The Cleanup Criteria Requirements for Response Activity rules are complex in nature. The CSA Group was comprised of representatives from the regulated community as well as environmental, academia and public health interests who have experience working with DEQ's remediation and redevelopment programs. The complexity of complying with the rules was an integral component of the stakeholder evaluation.

(R 299.51001) The rules are intended to clarify how to comply with the statute. In addition, educational material is available to the public and will continue to be updated.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

The rules in Box 4 are state rules and do not duplicate federal regulations.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

(R 299.1 – R 299.50) The entire rule sets pertaining to the DEQ's cleanup and redevelopment programs have been through a comprehensive review by the Environmental ARC (January, 2012) the Collaborative Stakeholder Initiative (February, 2012 through December, 2013), and the Criteria Stakeholders Advisory Group, (March 2014 through November 2014). The criteria included in the current rules have not been substantially updated since 2001. Additional physical, chemical and toxicological data may be available for some of the over 300 hazardous substances addressed by the criteria. These data need to be evaluated pursuant to the recommendations of the CSA to update the cleanup criteria.

(R 299.51001) The Part 10 rules were last evaluated by the Collaborative Stakeholders Initiative (2012) and the Due Care Stakeholders Workgroup (2013-14). There have been no significant technological or economic changes that would affect compliance or recommendations.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules. [Example.]

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deg and select "Laws & Rules" at the bottom of the page under the title "Regulations." On this page are links to ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deg/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2014 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation. [Example description.]

COMPLETED:

None have been completed.

OUTSTANDING:

Revisions to Cleanup Criteria Requirements for Response Activity (R 299.1 – 299.50)

**Department of Environmental Quality
Water Resources Division**

1. Rule(s) to be **processed** between July 1, 2015 and June 30, 2016.

Part 5 – Spillage of Oil and Polluting Materials Rules (R 324.2001 – R 324.2009).

Recommendations W-1 and W-10 of the Environmental ARC contain specific changes to the Part 5 rules that would make compliance less onerous. Stakeholder process was completed.

Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.

Part 13 – Floodplains and Floodways (R 323.1311 – R 323.1329). Stakeholder process was completed. *Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.*

Part 23 – Pretreatment Rules (R 323.2302 – R 323.2303 and R 323.2305 – R 323.2317)].

The Request for Rulemaking (RFR) for this rule set was withdrawn in February 2007 due to loss of rulemaking authority. An RFR will be resubmitted when rulemaking authority is restored.

Revisions to these administrative rules promulgated under Part 31 of the NREPA will continue to be processed. The proposed rules will incorporate the majority of the changes made to the General Pretreatment Regulations for Existing and New Sources of Pollution (Title 40 of the Code of Federal Regulations, Part 403) in 1995, 1997, and 2005. For the most part, the changes will offer streamlining and regulatory relief for municipalities and industries compared to the existing requirements. There also are a few minor additional requirements and clarifications that will be included. In addition, references will be updated. Stakeholder process was completed. *Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.*

Sewerage Systems: Need to make changes pertaining to operator certification. It is something the industry wants and they already have proposed changes worked out. No need for an advisory group. Not controversial.

Part 17 – Soil Erosion and Sedimentation Control: Need to address MDOT issues. Will be discussing the rules changes with the Joint Agency Transportation Committee (JACK). Not controversial.

2. Please include rules that are obsolete or superseded and can be **rescinded** between July 1, 2015 and June 30, 2016. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

3. Has the agency failed to exercise any mandatory/statutory rulemaking authority? Please explain.

The WRD has exercised all of its mandatory/statutory rulemaking authority.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Wetland Mitigation Banking Rules (R 281.951 – R 281.961). Recommendation W-12 of the Environmental ARC proposes changes to the program to facilitate more economically efficient wetlands mitigation projects.

Part 8 – Water Quality-Based Effluent Limit Developed for Toxic Substances Rules (R 323.1211) and Part 4 – Water Quality Standards Rules (R 323.1057). The Water Resources Division responded to recommendations W-2 and W-19 of the Environmental ARC by requesting that the U.S. EPA reevaluate all mercury-related requirements under the Great Lakes Initiative and to make appropriate changes based on new science and consideration for control of sources that have the greatest impact on aquatic sources.

Part 5 – Spillage of Oil and Polluting Materials Rules (R 324.2001 – R 324.2009). Recommendations W-1 and W-10 of the Environmental ARC contain specific changes to the Part 5 rules that would make compliance less onerous. *Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.*

Part 22 – Groundwater Quality Rules (R 323.2201 – R 323.2240). Recommendation W-4 of the Environmental ARC proposes clarification of the types of discharges that do not require groundwater permits – similar to what is done in the storm water regulations. Recommendation W-9 proposes expanding the permit-by-rule categories and eliminating categories requiring groundwater discharge permits for projects with minimal or no impact on groundwater. *Note: The DEQ cannot proceed until it receives rulemaking authority under Part 31, Water Resources Protection, of the NREPA.*

- (a) Whether there is a continued need for the rules.

There is a continued need for all of the rule sets identified in Box 4 above.

- (b) A summary of any complaints or comments received from the public concerning the rules.

The Wetland Mitigation Banking, Water Quality-Based Effluent Limit Developed for Toxic Substances, Groundwater Quality, and Spillage of Oil and Polluting Materials Rules will be thoroughly reviewed and amended as appropriate to address the Environmental ARC recommendations W-12, W-2 and W-19, W-4 and W-9, and W-1 and W-10, respectively. The Environmental ARC voiced concerns about these six rule sets.

- (c) The complexity of complying with the rules.

SB 0163 should increase the viability of **wetland mitigation banks** to facilitate more economically-efficient wetland mitigation projects.

The current mercury rules do not allow the DEQ to include net intake concentration in the development/calculation of **a water quality-based effluent limit** applied at a plant's external effluent.

The DEQ can add additional general permits for types of **groundwater discharges** that can streamline the permit issuance process and provide additional exemptions from the groundwater permit requirement.

The DEQ can modify the **Part 5 Rules** in an effort to make them more understandable and technically feasible to achieve the intended result, which is to prevent spills from occurring and responding quickly when they do occur.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

Some areas of the Part 5 Rules do contain more stringent requirements than the federal Spill Prevention, Control, and Countermeasures (SPCC) Plan; the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA); and the Superfund Amendments and Reauthorization Act (SARA) Title III reporting requirements but functions to be more protective of Michigan's water resources and to fill the gaps left by the federal regulations.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The Wetland Mitigation Bank Rules were promulgated in 1997.

The date of the last revision of the Part 4 and Part 8 Rules was January 13, 2006. The DEQ requested that the U.S. EPA reevaluate all mercury-related requirements under the Great Lakes Initiative and to make appropriate changes based upon new science and consideration for control of sources that have the greatest impact on aquatic sources.

The Wastewater Discharge Permits Rules were promulgated in 1979 and portions were modified to remain consistent with federal requirements. The last modification was in 2006

The Groundwater Quality Rules were promulgated in August 1999, and have not been modified subsequent to that date.

The Part 5 Rules were last revised and became effective August 31, 2001.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules. [Example.]

The DEQ has a Web page titled "Laws and Rules." To access this page, go to www.michigan.gov/deg and select "Laws & Rules" at the bottom of the page under the title "Regulations." On this page are links to ORR's Michigan Administrative Rules and Rule Revisions for Environmental Quality. Alternately, go to the following: http://www.michigan.gov/deg/0,4561,7-135-3307_4132---,00.html.

6. Please provide a list of the items identified for action in the 2014 ARP that have been completed and those that remain outstanding. Please indicate if an item is the subject of an Advisory Rules Committee recommendation. [Example description.]

COMPLETED:

Inland Lakes and Streams, Part 301, Inland Lakes and Streams, of the NREPA (R 281.811). Rule modified on March 11, 2015.

OUTSTANDING:

Part 5 – Spillage of Oil and Polluting Materials Rules (R 324.2001 – R 324.2009). An RFR will be submitted when rulemaking authority is restored.

Part 13 – Floodplains and Floodways (R 323.1311 – R 323.1329). An RFR will be submitted when rulemaking authority is restored.

Part 22 – Groundwater Quality Rules (R 323.2201 – R 323.2217). An RFR will be submitted when rulemaking authority is restored.

Part 23 – Pretreatment Rules (R 323.2302 – R 323.2303 and R 323.2305 – R 323.2317). An RFR will be submitted when rulemaking authority is restored.